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Homeland Security

United States
Coast Guard



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DEPARTMENT OF HOMELAND SECURITY

U. S. COAST GUARD

STATEMENT OF

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ON THE

COAST GUARD'S CIVIL RIGHTS PROGRAM

BEFORE THE

**COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON COAST GUARD AND MARINE TRANSPORTATION**

U. S. HOUSE OF REPRESENTATIVES

APRIL 1, 2009

Good morning Mr. Chairman and distinguished members of the Committee. It is a pleasure to appear before you today to discuss the Coast Guard Civil Rights Program. I am Terri Dickerson, the Director of the Coast Guard's Office of Civil Rights.

Overview and Abbreviated History of the Coast Guard Civil Rights Program

Like many other Federal agencies within the Executive Branch of government, the Coast Guard's formal human relations and Equal Employment Opportunity (EEO) programs began in the late 1960s. These programs were established under the guidance and direction of the U.S. Civil Service Commission and Executive Order 11478. Porvided below is a brief historic overview of their development.

- 1968: The Coast Guard began its efforts to assign personnel within its officer corps service-wide in support of Equal Opportunity (EO) programs and EEO counseling efforts.
- 1969: Under leadership of the Secretary of the newly-formed Department of Transportation (DOT), Coast Guard redoubled its efforts to publicize its EEO program to obtain positive equal opportunity results.
- By 1970: Lieutenant Maxie Berry, an African American, was the Chief of Military Equal Opportunity at Coast Guard Headquarters in Washington D.C. That same year, the Coast Guard formalized procedures governing submission of complaints of discrimination, appointed its first Equal Opportunity Counselor for Headquarters, and continued to assign EEO positions at field units.
- By 1973: Coast Guard had in place a Civil Rights Director. I am told the Coast Guard had one of the top EEO records within DOT.

It is important to distinguish between the programs being developed and those still in place. Equal Opportunity (EO) is a program extended to military members. The military personnel are also afforded opportunities to bring their matters through military adjudication procedures and processes. It is legal and acceptable because of the nature of missions for the military to apply certain policies and behaviors which are not permissible under civilian personnel policy. As discussed above, Coast Guard must afford civilians Equal Employment Opportunity (EEO). At the Coast Guard, one office, the Office of Civil Rights, is responsible for the EEO and EO programs. Currently, the other Armed Services have an entirely different complaint systems with different time frames and process structures. Some of the Services recently contacted the Coast Guard seeking information on our complaint structure.

In 1983, Mr. Walter Somerville assumed the position as Director of the Office of Civil Rights (OCR) and served for 21 years in the position through the Coast Guard's transition into the Department of Homeland Security (DHS). During his tenure the program fostered a culture that valued diversity, initiated and conducted cultural audits, and developed a program to provide tuition assistance to students at predominately Hispanic and Historically Black Colleges and Universities – HBCUs. To date, more than 250 officers have been commissioned as a result of this program. Additionally, the first Coast Guard JROTC Program was established and the Coast Guard Recruiting Initiative for the 21st Century (CGRIT) was implemented to enable students at HBCUs to transfer to the Coast Guard Academy to enhance efforts to attract African Americans to the Academy and the Officer Corps.

The program review, which I am here to discuss, alludes to climate concerns being evident at this time. Though I was not working for the Coast Guard, my predecessor conducted a number of similar reviews. An assessment in 1997 validated a number of problems in the delivery of field civil rights services and proposed changes in policy and organizational structure. The desire for more rigorous analyses led to subsequent studies in 1997, 1998, and 2002.

The Coast Guard adopted a number of recommendations, including restructuring the field civil rights program and implemented recruiting initiatives aimed at diversifying the military. It is evident the office at that time, perhaps because of a smaller number of civilian employees (about 5,000 in fiscal year 1999, compared to almost twice that number today) focused to a large extent on what we now consider to be Diversity programs; those programs which were intended to enable minority military members to reach their full potential. At some point, the main activities associated with recruitment, ascension rates, outreach to HBCUs and Minority Serving Institutions (MSIs) went to the diversity office within the Coast Guard.

On October 1, 2003, EEO Commission (EEOC) introduced Management Directive (MD) 715 to reflect significant changes in the law, including Supreme Court decisions. It superseded earlier EEOC management directives and related interpretative memoranda and provided new guidance on the elements of legally compliant Title VII and Rehabilitation Act programs. MD 715 requires agencies to take appropriate steps to ensure all employment decisions are free from discrimination. It also established standards by which EEOC would review the sufficiency of agency programs, which now includes periodic agency self-assessments and the removal of barriers to free and open workplace competition. The Coast Guard has made steady progress since the promulgation of MD 715; overall EEO compliance rates were 84 percent for 2004 and 86 percent for 2005.

The Coast Guard, like all Federal agencies, has an ongoing obligation to eliminate barriers that impede free and open competition in the workplace and prevent individuals of any race, ethnicity, nationality origin or gender from realizing their full potential. As part of this on-going obligation, the EEOC has directed agencies to conduct a self-assessment on at least an annual basis to monitor progress and identify areas where barriers may operate to exclude certain groups. A first step in conducting this self-assessment involves looking at the racial, national origin, and gender profile of relevant occupational categories in an agency's workforce to serve as a diagnostic tool to help agencies determine possible areas where barriers may exist and require closer attention.

In 2003, the Coast Guard transitioned to the newly-formed Department of Homeland Security (DHS), and the complaint structure changed again. The workload for complaints previously accepted or dismissed and investigated at Department of Transportation (DOT), was transferred to the Coast Guard Area and Headquarters levels. In spite of such challenges, I applaud my predecessor. Based on self-analysis findings and reviews, he inaugurated changes which required some care to successfully graft to a military culture a Headquarters staff that was being asked to look at things differently.

Vacancy: Director, Office of Civil Rights

Upon Mr. Somerville's retirement in 2005, military officers acted in the OCRs Director position until a successor could be selected. Despite a lack of continuity caused by the vacancy of a career SES Director for 19 months, the Program itself was productive in many respects under the guidance of these military officers. They built relationships with counterparts in DHS and within the Department of Defense (DoD). The OCR promulgated the Service's Equal Opportunity Manual, implemented a new training curriculum for Sexual Harassment Prevention, produced and disseminated Service-wide Standard Operating Procedures for pre-complaint processing, expanded the Program's Equal Opportunity Review visits to Coast Guard operational units in consultation with the Commandant's Diversity Advisory Council, and assisted the newly-formed DHS to establish an agency-wide complaint tracking system. This period of transition also included a staff reorganization to optimally support the complaint and investigation functions.

I was hired in April 2006. Based on my own assessment of the program and resources, I became convinced of the need to reorganize to achieve our desired functionality. Therefore, I undertook steps to establish more accountability and standardized processes while identifying service-wide improvement opportunities to be made - consistent with the Coast Guard's Service-wide modernization plans that soon would be underway.

I initially held an off-site all-hands meeting with my civil rights staff to focus on mission alignment with the Coast Guard. This event afforded my staff the opportunity to develop cohesive and strategically aligned proposals, many of which have been implemented.

The EEO Complaint Structure

Before discussing the recent OCR Program Review, it is important to provide a brief overview of the Coast Guard's EEO staffs and complaint processes. A graphical representation of these processes has been included at the conclusion of my statement.

Persons who believe they have been discriminated against must contact a military or civilian complaints counselor within 45-calendar days of an alleged discriminatory act. Names of local servicing EEO personnel are posted at every unit. These individuals are located throughout the Coast Guard, serving in a collateral duty or a full-time civil rights service provider status.

The roles of Civil Rights Service Providers in the field locations include:

- 1) Collateral Duty Counselor – These are individuals whose main job function is not EEO, but they volunteer to assist field EEO offices with counseling functions. They can provide up to 30 percent of their work time counseling individuals who believe they have been subjected to discrimination. Since it is a statutory requirement to provide counseling within 45 calendar days to individuals who believe that they are subjected to discrimination, and due to lack of full-time civil rights resources, we have utilized collateral duty counselors to provide this service.

- 2) Collateral Duty Command Officers – These are individuals, mostly military members who are assigned by local commands to assist field commanders with EEO activity. They usually attempt mediation, and serve as an advisor on EEO matters to the commander. In some instances, they provide EEO counseling to complainants.
- 3) Full-time Civil Rights Service Providers - These are individuals who have specialized experience providing counseling along with other civil rights services. These personnel report to local commanding officers and not to the OCR.

The Coast Guard currently employs 22 full-time personnel in the OCR at Coast Guard Headquarters.

In an effort to reduce complaint backlog and improve efficiency, personnel and aggrieved parties in both the informal and formal stage of the complaint may elect mediation. In general this is a voluntary opportunity for parties to attempt to resolve their disputes in a way other than the complaint process. The Coast Guard has some trained neutral mediators within our workforce and others available on a contract basis to assist parties and formulate enforceable resolutions in writing. When any person withdraws from mediation, the complaint resumes at the same stage in the traditional complaint process prior to entering mediation.

It is important to note that the collateral duty counselors and other field civil rights service providers report to the local commands and not to the OCR. These positions are appointed, recruited, and selected by local commands. Training is provided to newly-selected counselors, as is annual refresher training as required by EEOC regulations. In addition, the full-time civil rights managers at the Coast Guard Atlantic and Pacific Areas provide annual training for all field civil rights services providers. The OCR also hosts biannual civil rights conferences to which all civil rights service providers are invited.

The Complaint Process

The complaint process starts with the informal stage. If the aggrieved party is a military member, the command has 15 calendar days in which to attempt to resolve the matter. If it is not resolved within 15 calendar days, the member's informal complaint is processed by a counselor who conducts a limited inquiry into the allegations and attempts to resolve the matter within 30 calendar days. If the matter is not resolved within 30 calendar days, the counselor issues a notice of right to file a formal complaint to the aggrieved, and prepares a counselor's report that identifies the issue, basis of the complaint, witnesses, and other relevant factors.

If the aggrieved party is a civilian member, the informal complaint goes directly to the counselor for resolution within 30 days of issuance of a notice of right to file. The only difference between treatment of military and civilian members is that the military member's command gets 15 days to attempt resolution.

If the aggrieved party files a formal complaint, the matter will advance to the Area-level civil rights manager. The three Area EEO managers for the Coast Guard are located at Headquarters, Pacific Area, and Atlantic Area. These managers are responsible for reviewing the counseling reports to ensure that they are complete, forwarding the counseling report to the aggrieved within

15 calendar days of the filing of the formal complaint, and determining whether the claims are acceptable for further processing in accordance with established regulatory guidelines.

The Area civil rights managers are then responsible for advising the aggrieved party of their determination, along with the aggrieved rights and responsibilities. If the claim is accepted for further processing, the complaint will be investigated by a contract investigator from Coast Guard Headquarters.

After the complaint is investigated, the aggrieved will be provided with further rights. If the aggrieved is military, they will have the right to a final agency decision with appeal rights to DHS only. If the aggrieved is a civilian, the civilian member will have the right to a final agency decision by DHS with appeal rights to EEOC; the right to go directly to EEOC for a decision; or a decision from District Court, if 180 calendar days has passed since the filing of the formal complaint.

Coast Guard civilian employees may choose to have their cases heard at an EEOC hearing and receive a final decision from EEOC. If they elect to go to court and have a hearing, they usually wait longer.

One other important point is the Coast Guard supports and encourages mediation at every stage of the process. As such, we have resolved complaints from the very beginning at the command level, up to and during the EEOC hearing stage.

Complaint Statistics:

FY	Pre-complaints		Complaints Filed		Resolution Rate	
	Military	Civilian	Military	Civilian	Formal	Pre-complaint
08	46	65	25	50	12%	07%
07	79	61	17	41	19%	23%
06	54	129	15	45	12%	55%

Issues and Bases in FY08 Civilian and Military Complaints are relatively consisted throughout the past three years:

Civilian:

Issues:	Harassment (Non-Sexual)	Non-Selection	Disciplinary Actions
Bases:	Race (African-American)	Age (over 40)	Reprisal (for prior EEO Activity)

Military:

Issues:	Harassment (Non-Sexual)	Disciplinary Actions	Evaluations
Bases:	Race (African-American)	Gender (Female)	Reprisal (for prior EEO Activity)

Coast Guard's Request for a Functional Review

In early 2008, I sought to validate some known climate concerns. The decision to conduct a review was neither an offensive nor defensive undertaking. The decision was deliberate. I had taken steps, and while they were bearing fruit, I thought the Coast Guard could gain from outside perspective.

Initially, I reached out to EEOC and Defense Equal Opportunity Management Institute (DEOMI) staffs to inquire about the possibility of submitting my EEO program for their review. I was informed, however, that I would either have to limit the scope or endure an unacceptable delay in scheduling. I ultimately approached DHS and they agreed to assist a contractor in reviewing our program.

In April 2008, I sent Chairman Cummings a letter indicating my intention, and I also sent a letter to DHS outlining the review. Booz Allen Hamilton (BAH) was awarded the contract. Thus, with Admiral Allen's support, and with DHS staff agreeing to give us recommendations with the benefit of perspective from their office, I commissioned a self-assessment. The purpose was to (1) gain perspective on known problems already being addressed, and (2) to ask a third party (which turned out to be a contractor - BAH) to identify any other issues needing attention. Specifically, my letter 25 April 2008 to DHS Deputy and Director of EEO Programs, I requested:

“a comprehensive review and evaluation to determine the extent to which the structure, policies, procedures, and personnel of the OCR are meeting Coast Guard's equal opportunity missions, and whether it performs in accordance with the Equal Employment Opportunity Commission (EEOC) regulations set forth at 29 C.F.R. Part 1614; EEOC's MD 110 and MD 715; the Coast Guard Equal Opportunity Manual, COMDTINST M5350.4B (EOM) and the Uniform Code of Military Justice (10 U.S.C. Chapter 47). While your review should address our entire Civil Rights Program, we request that it address specifically the structure, policies, procedures, and personnel of my headquarters directorate that leads the program. In particular, please assess the office climate and its cause and effects; whether and to what extent it engages in productive activities that enhance our Civil Rights mission; and whether its personnel, including me, adhere to the Coast Guard values of honor, respect, and devotion to duty. Please specifically examine whether our personnel, including me, safeguard official information and ensure the confidentiality of information contained in EO/EEO case files and ensure an environment free from harassment.”

As I was interviewed by the BAH team, I provided them detailed information on the known challenges the Coast Guard was facing (e.g., structuring, training, lines of communication, climate concerns, skills assessments). I sought and received cooperation from all of my senior executive leadership colleagues in allowing their staffs to participate in the activity. The BAH team concluded its efforts with the publication of the Program Review in February 2009. I thought the BAH team ultimately did a good job of offering the outside perspective needed to validate existing concerns, and inform future approaches. In the Coast Guard's efforts to be as transparent as possible and to maximize readership amongst Coast Guard employees and commands, the entire review was posted on OCR's web site and a message was sent to all Coast Guard employees directing their attention to the results.

Program Review Findings, Implementation, and Action Planning

The BAH team found a number of good initiatives either recently completed or well into implementation. They noted a robust response to an incident at the Coast Guard Academy and its follow-on actions, the use of a monthly newsletter as a communications tool, and continuing progress on compliance with MD 715 self-assessment measures, reaching 92 percent in 2006, 96 percent in 2007, and (though trailing as a result of self-imposed higher standards) a still robust 94 percent in 2008.

At the heart of the recommendations is an overall program re-structuring. Consistent with previous review recommendations, this review recommends ensuring the program is a full-time function carried out by personnel with specialized EEO expertise. The review's foremost finding is that the current structure of locally-hired and accountable staff, augmented liberally with a host of collateral duty agents, while well-intended, has resulted in EEO practices which vary as a function of command and are not conducted in a prescribed manner.

Pursuant to this finding, I have proposed to the Commandant a national EEO program delivered from geographically distributed points throughout the Coast Guard by trained, permanent civil rights providers and a toll-free telephone access number, staffed around the clock seven days a week. These changes could be made consistent with the Coast Guard's ongoing Modernization efforts.

Additionally, the report stresses instances of EEO information being left unsecured at field locations, under-trained counselors, and commands delegating authority for complaints to unauthorized personnel. These are the very practices which spurred my request to have an independent review conducted in order to quantify and validate the extent of the problem, and to illustrate the cause for action for program restructuring.

The program review showed that the Coast Guard may not be exacting full value from self-assessment resources, since it historically has focused on one activity, EO Reviews. The resources expended on this activity could be applied to other evaluation tools, some of which could help make up for lack of field self-assessment efforts. For this reason, I am planning to inaugurate other data collection methodologies such as questionnaires which measure supervisor and employee satisfaction at discrete points in the field EEO process. Equal Opportunity reviews will continue, although (as the review recommended) they will no longer dominate the Coast Guard's self-assessment mix. We will utilize reviews in combination with other tools, some referenced above, in constructing more expansive measure of our EEO effectiveness.

Last year we changed the requirement for climate assessments by Coast Guard commands from triennial to annual. Our new proposed organizational structure will allow all Coast Guard units to have access to EEO centers staffed by full-time specialists who are trained and ready to advise them on interpreting annual DEOCS results, assessing longitudinal progress, and designing appropriate follow-on actions. The change in DEOCS requirements has added substantially to the Coast Guard's self-assessment database, and the opportunity to augment the more robust reporting with specialized assistance in its interpretation will increase its utility.

Concerning overall climate, we anticipate that setting up the one-stop EEO units will bring needed organization and cohesion to field employees. We are in the process of creating an intensive leadership development seminar for OCR and EEO field managers. As our office modernization proposal is finalized, we will look to secure facilitators to extend additional teambuilding activities between OCR and field staff. Once OCR restructures, we intend to conduct a climate survey, which we will repeat periodically to gauge progress.

With the handling of Personally Identifiable Information (PII), OCR terminated a long-standing practice of providing management officials reports of investigation on request. We now have set in place written disclosure agreements by which commands understand the terms of EEO personnel releasing portions of investigative reports (i.e. almost exclusively limited for purposes of attempting mediation with willing aggrieved parties, and only to management officials who possess the proper authority). The report points out that we must re-communicate parameters for EEO record disclosure because some personnel in the field have not kept current with new policies. Here again, a centralized reporting structure will safeguard against protections being overridden by persons unfamiliar with EEO record handling procedures. The OCR staff is re-issuing general guidance, emphasizing proper handling of PII information.

We have recognized, through reviews of complaint files, the need to shore up some skill gaps among Collateral Duty Counselors who process complaints of discrimination, as well as a small number of full-time Civil Rights Service Providers. The structure proposed in the report will enable the OCR to track and certify qualifications of EEO personnel, and to design training programs to ensure they sustain the necessary core competencies. Leadership and management must set priorities, certify training, establish performance standards, offer direct feedback, and be able to ensure accountability. This will require many changes in policy references, since Coast Guard EEO/EO has been under local command for so many years. In the future, we anticipate that all EEO personnel will be full-time. Furthermore, hiring and training of service providers, currently done at the field level, will be done at Headquarters.

Due to DHS' heavy workload with final agency decisions it issues, our service members were experiencing 12- to 18-month periods for decisions in their discrimination claims. With DHS support, final decisions in military complaints will now be decided by me. I have enacted plans to offer all recommendations for final decisions in the 60-day period prescribed under Coast Guard policy. Consistent with report recommendations, we plan to utilize contract assistance with term employees to address a backlog of cases that DHS is passing to us. In addition, we have assembled a special mediation team which has identified a subset of the returned cases for aggressive resolution.

Admiral Allen has directed the development of an Executive Level EEO/Diversity Training course to raise awareness of these complex issues. I am pleased to report that the first 2.5-day session was just completed in March. It included frank and open discussions designed to help leaders better manage climate issues. We plan to hold these sessions several times per year to ensure the widest possible dissemination of the information.

Everything cannot be done overnight and some things may not be feasible. The Coast Guard is considering the recommendations and committing items to action plans rolled out over the next 18 months to 2 years.

I fully believe the decision to conduct a program review was a worthwhile endeavor, as evidenced by the findings and responses in the review, the endorsement by the DHS Office of Civil Rights and Civil Liberties, the Commandant's commitment, and his tasking of the Coast Guard's senior leaders to provide the necessary support for Service-wide implementation of actionable recommendations.

Transparency is the hallmark of self correction, and as the Commandant has stated, he is personally committed to ensuring that the Civil Rights Program receives the oversight, assistance, and resources necessary to implement all appropriate recommendations. The Commandant and I meet frequently to provide progress updates on Coast Guard Civil Rights matters and implementation of our action plan to overcome the deficiencies noted in the Review.

With the oversight, guidance, and support of the Coast Guard's senior leadership, my staff and I are fully engaged in developing and executing a comprehensive strategy to address all the issues in the Review. I am confident that I have the commitment and support to carry out Service-wide changes. The Commandant has tasked senior officers to augment my Action Team to assist in accelerating the review and development of the tracking of initiatives and challenges identified in the Review.

I look forward to a future opportunity to report our successes to you.

Thank you for the opportunity to testify today. I look forward to your questions.